

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 943 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GRAM KALYAN YAGNA SAMITI

Versus

M.I. RAJAPURA & OTHERS

Appearance:

MS VASUBEN P SHAH, Sr. Advocate with
Instructing Counsel KALPANA BRAHMBHATT for the Petitioner.

None present for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGEMENT

1. This Special Civil Application is taken for hearing today. Heard learned counsel for the petitioner. The Gram Kalyan Yagna Samiti filed this Special Civil Application before this Court. This Samiti runs the school at village Sachodar, Tal. Himmatnagar. The respondent no.1 was appointed as a teacher in the said school. The respondent no.1 was dismissed from the

services by the petitioner after holding an inquiry against him. Before giving effect to the order of dismissal, the petitioner sent the papers, of its action of dismissing the respondent no.1, for approval, to the District Education Officer, Sabarkantha under sec. 36 of the Gujarat Secondary Education Act. The District Education Officer by passing a speaking order declined to grant the approval to the action of the petitioner to dismiss the respondent no.1 from services. The petitioner then took the matter in appeal before the Gujarat Secondary Education Tribunal at Ahmedabad. The Tribunal has further considered the matter on merits in detail and under its order dated 2nd January, 1986 rejected the appeal of the petitioner and the decision of the District Education Officer was held to be justified.

2. The learned counsel for the petitioner has failed to point out any error apparent on the face of the order of the Tribunal. The District Education Officer as well as the tribunal found that the inquiry conducted against the respondent no.1 suffers from illegalities. The reliance has been placed to hold the petitioner guilty of the charges by the inquiry authority on the statements of the staff and the students recorded earlier in absence of the delinquent. Other illegalities were also found in the inquiry. Taking into consideration this aspect, the Tribunal has reached to the conclusion that it is not a case which calls for interference in the order made by the District Education Officer. The Tribunal has also recorded a finding that the inquiry has been conducted very crudely. The relevant portion of the judgment of the Tribunal at page no.25 reads as under:-

Therefore, on facts I come to the conclusion that the decision of the D.E.O. that it is not a case where the principal should be dismissed seems to be justified. But I say that inquiry authority has conducted the inquiry very crudely. It may be that inquiry authority who is a layman cannot conduct the matter in a manner in which a judicial authority would do. But in this case, it has been found that the initiation of the inquiry was made by the inquiry authority by putting questions to the delinquent. When the inquiry was proceeding questions were put to each and everybody who present and concerned with the topic. Not only that, but at some places the inquiry authority has put questions in the form of cross-examination to the delinquent just in order to find the guilt. For instance, on page-13 of the draft of the inquiry officer a

direct question was put to him about Pravinbhai (Darji) putting a casual leave for half-day after he resumed on his table. The delinquent denies this. Then again a question was put to him as to how he could say that Pravinbhai had not put the C.L. report when the delinquent was not present. In fact, the delinquent's first answer was that Pravinbhai was not in the school upto noon and he had not put any report on his table. In Item-4 pertaining to Rashmi Raval (which is not considered by the Inquiry authority) questions are put in the form of cross-examination. In Item-6 pertaining to the inspection for grant also questions are put in the form of cross-examination. The same is pertaining to Item-7 and Item-8, 9 & 10. Therefore, if on facts the appellant could not have succeeded, it would be doubtful whether the inquiry can be said to have been properly held without any bias. Practically therefore, the D.E.O. in the last line before the decision has observed that the inquiry committee has remained one-sided.

The learned counsel for the petitioner contended that the D.E.O. and Tribunal may be justified not to approve the action of the management of dismissing the respondent no.1 from services, but a rider which has been put on the power of the employer not to give the penalty of dismissal after holding proper inquiry, is arbitrary. I find sufficient merits in this contention of the learned counsel for the petitioner. The order of the dismissal made by the management on a defective inquiry may be a sufficient ground not to accord the sanction to it by the District Education Officer under sec. 36 of the Gujarat Secondary Education Act and the Tribunal may also be justified to affirm the said order of D.E.O. but in case of serious charges and on proof of the same after holding proper inquiry, how this rider that the penalty other than dismissal can only be given could have been put by the Tribunal. The last part of the order made by the Tribunal is certainly in excess of its jurisdiction and it is to be corrected. Though the order of the D.E.O. as well as the order of the Tribunal is maintained, but last part of the order of the Tribunal in which it has put a rider on the right of the employer not to give the penalty of dismissal to the delinquent in case charges are proved against him after holding proper inquiry, is set aside. It is hereby clarified that in case on fresh inquiry if all or any of charge or other charges are proved against the respondent no.1, and if petitioner considers it to be a case of dismissal of the respondent

no.1 from the services then it shall be open to it to pass an appropriate order of penalty of dismissal of respondent no.1. Rule is discharged subject to the aforesaid direction.

zgs/-